

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

CHARA CURTIS, et al.,

Plaintiffs,

v.

ILLUMINATION ARTS, INC., et al.,

Defendants.

CASE NO. C12-0991JLR

ORDER DENYING  
DEFENDANT'S MOTION FOR  
SUMMARY JUDGMENT

**I. INTRODUCTION**

Before the court is pro se Defendant Kimmie Thompson's motion for summary judgment. (Mot. (Dkt. # 77).) Ms. Thompson asks the court to release her of any and all liability and dismiss her as a defendant in the case. (*Id.* at 1.) The court has reviewed Ms. Thompson's motion, all submissions filed in support of and in opposition thereto, the balance of the record, and the applicable law. Being fully advised, the court denies Ms. Thompson's motion.

## II. BACKGROUND

This case has taken a number of turns during its pendency in federal court. The court sets out the factual and procedural background in some detail because it is relevant to its consideration of Ms. Thompson's motion. On June 8, 2012, Plaintiffs Chara Curtis, Cynthia Aldrich, and Alfred Currier filed a complaint against Defendants Ms. Thompson, John Thompson, Illumination Arts, Inc. ("IAI"), and Illumination Arts Publishing, LLC ("IAP") for breach of contract and copyright infringement. (*See generally* Compl. (Dkt. # 1).) Plaintiffs allege that they terminated their publishing agreements with Defendants after Defendants stopped paying royalties to Plaintiffs for sales of three inspirational children's books and after Defendants electronically reproduced and distributed the books without Plaintiffs' permission. (*See generally id.*)

On July 25, 2012, Defendants appeared through their counsel. (Not. of App. (Dkt. # 12).) On August 7, 2012, Defendants answered the complaint. (Ans. (Dkt. # 13).) On September 13, 2012, the court notified IAI and IAP that they must file a corporate disclosure statement pursuant to Federal Rule of Civil Procedure 7.1. (*See* Dkt. Entry dated Sept. 13, 2012.)

On November 29, 2012, Plaintiffs served Defendants with their first set of discovery requests, which included 19 interrogatories, 68 requests for production of documents, and 43 requests for admission. (*See* 1/31/13 Kruckeberg Decl. (Dkt. # 17) ¶ 2, Ex. A.) After 30 days, Plaintiffs received no response from Defendants. (*Id.* ¶ 3.) On January 2, 2013, counsel for Plaintiffs emailed counsel for Defendants regarding the status of Defendants' responses. (*Id.*) On January 4, 2013, counsel for

1 Defendants requested an additional 30 days to respond to the discovery requests due to  
2 the volume of financial data Plaintiffs requested. (*Id.* ¶ 4.) On January 9, 2013,  
3 Plaintiffs' counsel sent a letter to Defendants' counsel granting Defendants an additional  
4 ten days with respect to the production of financial documents, but demanding immediate  
5 responses to the remainder of Plaintiffs' discovery requests. (*Id.* ¶ 5, Ex. B.) Plaintiffs  
6 received no response from Defendants with respect to the January 9, 2013, letter.  
7 (*Id.* ¶ 6.)

8 On January 18, 2013, Plaintiffs' counsel emailed Defendants' counsel requesting a  
9 teleconference with respect to the outstanding discovery requests. (*Id.* ¶ 7.) Counsel for  
10 the parties conducted a teleconference on January 22, 2013. (*Id.* ¶ 8.) Counsel for  
11 Defendants indicated that Defendants could gather responsive documents by January 31,  
12 2013. (*Id.*) As of January 31, 2013, Plaintiffs had received no response or objection to  
13 any of the discovery requests at issue. (*Id.* ¶ 12.) On January 31, 2013, Plaintiffs filed  
14 their first motion to compel discovery and for sanctions against Defendants. (*See* 1/31/12  
15 Mot. (Dkt. # 16).) Defendants filed no response to Plaintiffs' first motion to compel  
16 discovery. (*See generally* Dkt.)

17 On February 20, 2013, the court found that Defendants had waived any objections  
18 to Plaintiffs' discovery requests and ordered Defendants to provide "complete responses  
19 without objection" no later than March 1, 2013. (2/20/13 Order (Dkt. # 19) at 6.) The  
20 court also order Defendants to pay sanctions to Plaintiffs in the form of reasonable  
21 expenses and attorneys' fees incurred in bringing Plaintiffs' first motion for sanctions.  
22 (*Id.* at 8.) Finally, because IAI and IAP had still not filed their Rule 7.1 corporate

1 disclosure statements, the court again ordered them to do so no later than March 1, 2013.  
2 (*Id.* at 6.) The court warned Defendants that should they fail to produce the ordered  
3 discovery or provide the required corporate disclosure statements within the stated  
4 timeframe, the court would consider imposing additional sanctions. (*Id.* at 7.)

5       Meanwhile, on February 20, 2013, the same day that the court issued its first order  
6 regarding discovery and sanctions, Defendants finally served Plaintiffs with their initial  
7 responses to Plaintiffs' discovery requests. (6/5/13 Kruckeberg Decl. (Dkt. # 31) Ex. A.)  
8 Despite the court's order directing Defendants to provide "complete responses without  
9 objection" (2/20/13 Order at 6), Defendants objected to all discovery requests related to  
10 Ms. Thompson's finances (6/5/13 Kruckeberg Decl. Ex. A). Between February 27 and  
11 29, 2013, Defendants began producing financial records relating to Mr. Thompson, IAI,  
12 and IAP. (*Id.* ¶ 6.) However, Defendants produced no information regarding Ms.  
13 Thompson's financial records (*id.*), which Plaintiffs asserted they needed to establish  
14 their claim that the corporate veil between IAI and IAP, on one hand, and Ms. Thompson,  
15 on the other, should be pierced. (*See* 2d Sanc. Mot. (Dkt. # 30) at 4-5.)

16       On March 19, 2013, the court entered an additional order specifying the amount of  
17 reasonable expenses and attorneys' fees Defendants were required to pay as sanctions to  
18 Plaintiffs pursuant to the court's February 20, 2013, order. (3/19/13 Order (Dkt. # 21) at  
19 3.) The court ordered Defendants to pay \$5,594.00 to Plaintiffs within 14 days of the  
20 date of the order. (*Id.* at 5.) Despite the court's order, to date, Plaintiffs have not  
21 received the court-ordered payment. (3/28/14 Pre-hearing Memo (Dkt. # 84) at 10.)  
22

1 The court also noted in its March 19, 2013, order that Defendants had failed to  
2 comply with the court's February 20, 2013, order to file their corporate disclosure  
3 statements by March 1, 2013. (8/8/13 Kruckeberg Decl. at 3-4.) Accordingly, the court  
4 sanctioned IAI and IAP's counsel \$500.00 (representing \$250.00 for each corporate  
5 disclosure statement he failed to file), and ordered him to pay the sanctions and to file the  
6 required corporate disclosure statements within 14 days. (*Id.* at 5.) Once again, neither  
7 IAI, IAP, nor their counsel has complied with the court's order by paying the fine.<sup>1</sup>

8 On March 28, 2013, Plaintiffs filed their first motion for partial summary  
9 judgment (Dkt. # 22), which the court granted in part and denied in part (5/29/13 Order  
10 (Dkt. # 29)). Defendants admitted that "IAI and IAP breached their obligations to pay  
11 Plaintiffs' royalties" (4/15/13 Resp. (Dkt. # 25) at 3), and accordingly, the court granted  
12 Plaintiffs' motion for summary judgment with respect to IAI's and IAP's liability to  
13 Plaintiffs for breach of contract (5/29/13 Order at 10). The court also granted Plaintiffs'  
14 motion to disregard the corporate veil between IAI and IAP based on findings that IAP  
15 was a mere continuation of IAI and that there had been fraudulent transfers of assets  
16 between IAI and IAP. (*Id.* at 10-18.) The court, however, declined to pierce the  
17 corporate veil with respect to the Thompsons personally on summary judgment. (*Id.* at  
18 18-19.) The court also ruled that Defendants' infringement of Plaintiffs' copyrights was  
19 willful, and that the Thompsons were directly liable for the infringement because all  
20 Defendants "admitted that they reproduced, distributed and displayed the Books after

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21  
22 <sup>1</sup> On June 11, 2013, IAI and IAP filed a corporate disclosure statement. (*See* Dkt. # 35.)

1 Plaintiffs terminated the publishing agreements and Defendant's license to do so." (*Id.* at  
2 19-20.) Finally, the court granted Plaintiffs' motion for entry of a permanent injunction  
3 prohibiting any further infringement of Plaintiffs' copyrights. (*Id.* at 23-24.) As a part of  
4 this order, the court required Defendants to return all infringing copies of the three books  
5 to Plaintiffs. (*Id.* at 24.)

6 On June 5, 2013, Plaintiffs filed their second motion to compel discovery and for  
7 sanctions. (*See generally* 6/5/13 Mot. (Dkt. # 30).) In addition, Plaintiffs also filed a  
8 second motion for partial summary judgment. (2d SJ Mot. (Dkt. # 32).) On July 18,  
9 2013, the court ruled on both motions. (*See generally* 7/18/13 Order (Dkt. # 43).) On  
10 Plaintiffs' second motion to compel and for discovery sanctions, the court found that  
11 Defendants' failure to comply with the court's prior discovery order was willful and that  
12 Plaintiffs had suffered prejudice as a result of Defendants' obstreperous conduct. (*Id.* at  
13 17-18.) Although Defendants asserted that they should not be sanctioned because  
14 Plaintiffs had ample opportunity to go on-site to review the requested documents, the  
15 court found that Defendants' offer to Plaintiffs for an on-site review of the documents  
16 was illusory. (*See id.*) Plaintiffs' counsel had asked about the availability of duplication  
17 services at the private home that served as IAI's and IAP's offices and had proposed  
18 sending the documents off-site for duplication. (6/5/13 Kruckeberg Decl. (Dkt. #  
19 31) ¶ 9.) Defendants' counsel responded that he would inquire with his clients. (*Id.*)  
20 Despite numerous follow-up inquiries from Plaintiffs' counsel, Defendants never  
21 provided clarification or indicated that they would agree to having the documents sent  
22 off-site for duplication and they continued to put off arrangements for inspection and

1 copying of the on-site documents. (*Id.* ¶¶ 10-20, Exs. G-N.) By the time that Plaintiffs  
2 filed their second motion to compel discovery and for sanctions, they had still not been  
3 able to make arrangements to review Defendants' documents on-site. (*See generally*  
4 6/5/13 Mot.)

5 Accordingly, the court granted Plaintiffs' request for monetary sanctions in the  
6 form of Plaintiffs' reasonable expenses, including attorneys' fees, caused by Defendants'  
7 failure to comply with the court's prior discovery order. (7/18/13 Order at 21.) In order  
8 to avoid compounding the prejudice to Plaintiffs by forcing them to go to trial on an  
9 incomplete record, the court struck the trial date, authorized Plaintiffs to file an additional  
10 motion for summary judgment following Defendants' compliance with its order, and  
11 stated that the court would reschedule a trial date following consideration of Plaintiffs'  
12 motion for summary judgment, if necessary. (*Id.* at 21.) Finally, the court once again  
13 ordered Defendants to produce all of the financial records pertaining to Ms. Thompson  
14 and the remaining outstanding discovery covered by the court's first discovery and  
15 sanctions order no later than August 1, 2013. (*Id.* at 19-20.) The court further ordered  
16 Defendants and their counsel to file a certification with the court by the same day stating  
17 that they had complied with the court's order. (*Id.*) The court expressly warned  
18 Defendants that if they failed to produce the ordered discovery or to file the required  
19 certifications with the court within the ordered timeframe, the court would consider  
20 additional sanctions including adverse evidentiary findings or the entry of default  
21 judgment against Defendants. (*Id.* at 20.)  
22

1 In its July 18, 2013, order, the court also granted Plaintiffs' motion for summary  
2 judgment with respect to the amount of Mr. Curtis' contract damages, but denied  
3 summary judgment with respect to the amount of Ms. Aldrich's and Mr. Currier's  
4 contract damages. (*Id.* 9-10.) The court also denied summary judgment with respect to  
5 Plaintiffs' request for maximum statutory damages regarding their claim for copyright  
6 infringement, ruling that such a request was properly reserved for the jury. (*Id.* at 10-15.)

7 On August 8, 2013, Plaintiffs filed their third motion for sanctions and for partial  
8 summary judgment (*see generally* 3d Mot. (Dkt. # 45)), after Defendants ignored the  
9 court's July 18, 2013, order directing the production of discovery and the filing of a  
10 certification verifying such production (8/8/13 Kruckeberg Decl. (Dkt. # 48) at 2).  
11 Plaintiffs again sought partial summary judgment with respect to the amount of Ms.  
12 Aldrich's and Mr. Currier's contract damages. (3d. Mot. at 10-12.) Plaintiffs also  
13 renewed their motion to pierce the corporate veil between the corporate entities and Mr.  
14 Thompson on summary judgment. (*Id.* at 12-13.) In addition, Plaintiffs moved for  
15 default judgment against Defendants as a sanction for their failure to respond to the  
16 court's July 18, 2013, order by producing the required discovery and certifications. (*Id.*  
17 at 8-10.)

18 In response to Plaintiffs' third motion for sanctions and summary judgment, the  
19 court pierced the corporate veil between IAI and IAP, on one hand, and Mr. Thompson,  
20 on the other. (11/21/13 Order (Dkt. # 55) at 16-24.) Although both Mr. Thompson and  
21 his counsel at the time filed declarations opposing the motion, neither of these  
22 declarations was signed. (*Id.* at 19.) Consequently, the court declined to consider them.



1 (*Id.*) Mr. Thompson ultimately filed a second signed declaration one week after the  
2 noting date for the motion that was different from his first declaration. (*Id.* at 20 (citing  
3 9/6/13 Thompson Decl. (Dkt. # 53))).) The court also declined to consider this declaration  
4 because it was untimely. The court granted Plaintiffs' motion on partial summary  
5 judgment, piercing IAI's and IAP's corporate veils with respect to Mr. Thompson. (*Id.* at  
6 20-21.)

7 Nevertheless, the court explained that even if it had considered Mr. Thompson's  
8 second untimely declaration, the result would have been no different. (*Id.* at 22-24.)  
9 Plaintiffs had provided documentation that Mr. Thompson dissipated corporate assets,  
10 and Mr. Thompson admitted that some of his activities might technically qualify as  
11 commingling. (9/1/13 Thompson Decl. at 11.) The court ruled that, in light of this  
12 evidence, Mr. Thompson's bald assertions that his practices had done no harm to  
13 Plaintiffs were insufficient to create a genuine issue of material fact. (11/21/13 Order at  
14 22-24.) The court explained that this was particularly so because all of the records  
15 necessary to support his stance were, or should have been, within his control. (*Id.* at 22-  
16 23.) Yet, he failed to provide them to the court and failed to explain why. (*Id.*) In light  
17 of these facts, Mr. Thompson's late-filed, self-serving declaration, which was devoid of  
18 any supporting evidence, failed to create a genuine issue of fact. (*Id.* at 23-24.)

19 In addition to entering summary judgment on the foregoing issues, the court  
20 entered default against Defendants with respect to Plaintiffs' claims for breach of contract  
21 and copyright infringement as a sanction for their continued discovery violations and  
22 failure to abide court orders. (*Id.* at 37.) Although the court had already entered

1 summary judgment with respect to copyright infringement (*see* 5/29/13 Order at 21), the  
2 effect of the entry of default was to provide an alternate basis for liability and to eliminate  
3 Defendants' right to a jury trial with respect to statutory damages. Finally, the court also  
4 (1) issued an order to show cause with respect to its prior ruling on partial summary  
5 judgment concerning the amount of Mr. Curtis's contract damages, (2) reserved ruling on  
6 Plaintiffs' request for maximum statutory damages on their copyright infringement  
7 claims and damages for other claims until after an evidentiary hearing on damages  
8 pursuant to Federal Rule of Civil Procedure 55(b)(2)(B), and (3) granted Plaintiffs'  
9 request for reasonable attorneys' fees and expenses. (*See generally* 11/21/13 Order.)

10 Following further submissions from the parties, the court initially set the  
11 evidentiary hearing on default judgment and damages for April 4, 2014. (1/10/14 Order  
12 (Dkt. # 65) at 5.) However, following a motion to modify the schedule by Mr. Thompson  
13 and Ms. Thompson (Dkt # 67), the court rescheduled the evidentiary hearing for April 30,  
14 2014. (1/23/14 Order (Dkt. # 71).) As a part of its January 10, 2014, order, the court also  
15 granted the Thompsons' request to proceed pro se in this litigation. (1/10/14 Order at 3.)

16 On February 19, 2014, Ms. Thompson filed a pro se motion for summary  
17 judgment even though the court previously had determined her to be liable for breach of  
18 contract on default and for copyright infringement on summary judgment. (*See* Mot.)  
19 Among other things, Ms. Thompson alleges that she has "not been involved in any of the  
20 decisions which relate to the Plaintiff's complaint" and that Mr. Thompson "agreed to  
21 take full responsibility for providing the detailed answers to [the discovery demands] and  
22 sent his final information to Mr. King on February 2, 2013." (*Id.* at 2, 3.) "However,

1 [she] did not learn until later that Mr. King hadn't filed the required responses with the  
2 court until February 20, 2013." (*Id.*) Importantly, Ms. Thompson admits that the late  
3 filing made her "feel betrayed, upset, confused, and determined not to provide [her]  
4 personal information." (*Id.*) Accordingly, Ms. Thompson asks the court to release her  
5 from any and all liability and to dismiss her as a defendant in the case. (*Id.* at 1.)

### 6 **III. ANALYSIS**

#### 7 **A. The Court Liberally Construes Ms. Thompson's Pro Se Motion**

8 As detailed above, the court has already granted Plaintiffs' motion for summary  
9 judgment as to Ms. Thompson's liability on copyright infringement (5/29/13 Order at 21)  
10 and Plaintiffs' motion for default as to Plaintiffs' contract claims and copyright claims  
11 (11/21/13 Order). Therefore, because the court has already determined Ms. Thompson's  
12 liability on summary judgment or by entering default, her subsequent summary judgment  
13 motion regarding liability is unavailing.

14 Federal courts may, however, "ignore the legal label that a pro se litigant attaches  
15 to a motion and recharacterize the motion in order to place it within a different legal  
16 category." *Castro v. U.S.*, 540 U.S. 375, 381 (2003); *see also U.S. v. Etinger*, 902 F.2d  
17 1383, 1385 (9th Cir. 1990) (per curiam) (finding that the district court erred in not  
18 construing motion for reconsideration of sentence as a habeas petition). Accordingly, to  
19 "create a better correspondence between the substance [of the motion] and its underlying  
20 legal basis," *Castro*, 540 U.S. at 381-382, the court construes Ms. Thompson's motion as  
21 a motion to set aside default for "good cause" under Federal Rule of Civil Procedure  
22 55(c) and as a motion for reconsideration under Local Rule LCR 7(h).

**B. Motion to Set Aside Default**

The import of the court's order granting default on Plaintiffs' motion for sanctions was to provide an alternate basis for copyright infringement liability and to eliminate Defendants' right to a jury trial with respect to a determination of statutory damages for copyright infringement. (*See* 11/21/13 Order at 29-40.) In addition, the court also entered default against Defendants with respect to Plaintiffs' breach of contract claim. (*Id.*) The court had already granted Plaintiffs' first motion for summary judgment with respect to IAI's and IAP's liability for breach of contract (*see* 5/29/13 Order at 10), and Plaintiffs' third motion for summary judgment with respect to Mr. Thompson's liability for breach of contract by piercing the corporate veil (*see* 11/21/13 Order at 21). Thus, with respect to these three defendants, the court's default order merely provides an alternate basis for breach of contract liability and eliminates their right to a jury trial with respect to damages. The court's default order, however, also imposed liability against Ms. Thompson for breach of contract.

Ms. Thompson's motion (liberally construed) asks the court to set aside its entry of default for "good cause."<sup>2</sup> *See* Fed. R. Civ. P. 55(c). To determine "good cause" a court must consider three disjunctive factors: (1) whether the party seeking to set aside default engaged in culpable conduct that led to the default; (2) whether the moving party has no meritorious defense; and (3) whether reopening the default would prejudice the

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<sup>2</sup> The full text of Federal Rule of Civil Procedure 55(c) reads: "The court may set aside an entry of default for good cause, and it may set aside a default judgment under Rule 60(b)." Fed. R. Civ. P. 55 (c).

1 non-moving party. *United States v. Signed Personal Check No. 730 of Yubran S. Mesle*,  
 2 615 F.3d 1085, 1091 (9th Cir. 2010). The presence of any one of these factors is  
 3 sufficient for the court to refuse to set aside default. *Id.* Additionally, although the above  
 4 test applies to motions seeking relief from default under Rule 55(c) and default judgment  
 5 under Rule 60(b), the test is more liberally applied in the 55(c) context. *Id.* at 1091 n.1  
 6 (citing *Cracco v. Vitran Exp., Inc.*, 559 F.3d 625, 631 (7th Cir. 2009)).

### 7 **1. Culpable Conduct**

8 As another court in this district has recognized, there appear to be two lines of  
 9 cases in the Ninth Circuit on the correct standard “for evaluating the ‘culpable conduct’  
 10 factor for purposes of setting aside a default.” *Lakeview Cheese Co., LLC v. Nelson-*  
 11 *Ricks Creamery Co.*, 296 F.R.D. 649, 653 (D. Idaho 2013). The first line concerns a  
 12 defaulted party not represented by legal counsel or otherwise legally sophisticated.  
 13 *Mesle*, 615 F.3d at 1093. Under this standard, a party’s “conduct is culpable if he has  
 14 received actual or constructive notice of the filing of the action and *intentionally* failed to  
 15 answer.” *Id.* at 1092 (emphasis in original) (quoting *TCI Life Ins. Plan v. Knoebber*, 244  
 16 F.3d 691, 697 (9th Cir. 2001)). The “intentionality” component requires an independent  
 17 showing of bad faith. *Id.* An unsophisticated party could receive notice and fail to  
 18 respond for reasons not in bad faith. *See id.* at 1093 (finding that defendant’s conduct  
 19 was not in bad faith because he was “ignorant of the law” and unable to understand his  
 20 legal obligations). Rather, “intentionality” occurs only if there is no explanation for the  
 21 unsophisticated party’s inaction other than a “devious, deliberate, willful, or bad faith  
 22 failure to respond.” *Id.* Therefore, the test for unsophisticated parties requires a two-step

1 inquiry: (1) whether there was notice and a failure to respond, and (2) if so, whether that  
2 failure was “intentional” because it was in bad faith. *See id.*

3       The second line of cases concerns legally sophisticated parties. *See Lakeview*  
4 *Cheese Co.*, 296 F.R.D. at 653. Under the second standard, courts assume a sophisticated  
5 party’s failure to respond was “intentional.” *Mesle*, 615 F.3d at 1093. Rather than the  
6 two-step inquiry associated with unsophisticated parties, a court need only ask whether a  
7 sophisticated party failed to respond. *Lakeview Cheese Co.*, 296 F.R.D. at 653. That  
8 failure alone triggers culpability because courts assume “intentionality.” *Id.* Parties with  
9 legal representation know, or should know, the consequences of a failure to respond.  
10 *Mesle*, 615 F.3d at 1093. Accordingly, a legally sophisticated party’s failure to respond  
11 after receiving actual or constructive notice is sufficient for a finding of culpability. *Id.*;  
12 *see Direct Mail Specialists, Inc. v. Eclat Computerized Techs., Inc.*, 840 F.2d 685, 690  
13 (9th Cir. 1988) (holding that actual or constructive notice and failure to respond was  
14 sufficient for a finding of culpable conduct because defendant, as a lawyer, “presumably  
15 was well aware of the dangers of ignoring service of process”); *Franchise Holding II,*  
16 *LLC v. Huntington Rests. Group, Inc.*, 375 F.3d 922, 926 (9th Cir. 2004) (holding that  
17 actual or constructive notice sufficient for finding of culpable conduct when party’s  
18 lawyer received service of process and failed to respond to the action).

19       Although Ms. Thompson was represented by counsel at the time the court entered  
20 default, she presently proceeds pro se. (*See* 1/10/14 Order (Dkt. 65) at 3.) Because she  
21 was represented at the time the court entered default, it seems logical that she should be  
22 held to the standard of a legally sophisticated party. Nevertheless, the court need not

1 make this determination because she has not established “good cause” to set aside default  
2 under either standard. Ms. Thompson deliberately disobeyed court orders, independently  
3 establishing the bad faith intentionality necessary for a finding of culpable conduct.

4 Despite numerous court orders to the contrary, Ms. Thompson concedes in her  
5 motion that she was “determined not to provide [her] personal [financial] information.”  
6 (Mot. at 3.) The Ninth Circuit Court of Appeals characterizes repeated disregard of court  
7 orders as bad faith conduct. For example, in *Yusov v. Yusef*, 892 F.2d 784 (9th Cir.  
8 1989), the Yusovs and their attorney repeatedly disobeyed court orders, including those  
9 compelling discovery. *Id.* at 786. The district court entered default judgment against the  
10 Yusovs for their failure to comply and denied the Yusovs’ motion to set the default  
11 judgment aside. *Id.* The Ninth Circuit held that the district court did not abuse its  
12 discretion in denying the motion to set aside default judgment. *Id.* at 787. The Court  
13 found that both the Yusovs and their attorney engaged in inexcusable, bad faith conduct  
14 when they “intentionally and repeatedly disregarded court orders.” *Id.* Similarly, even  
15 when a party proceeds pro se, courts in this Circuit have found that an intentional  
16 disregard of court orders is sufficient to find bad faith. *U.S. v. Wight*, Civil No.  
17 CIV.S989443FCD/DAD, 2002 WL 664005, at \*3 (E.D. Cal. Mar. 7, 2002) (finding that  
18 pro se defendant’s “intentional and consistent disregard of a court order is inexcusable  
19 and is sufficient to establish bad faith”).

20 Ms. Thompson’s admitted “determin[ation] not to provide [her] personal  
21 [financial] information” (Mot. at 3), establishes her intentional disregard for this court’s  
22 orders and is sufficient to establish bad faith irrespective of her status as a pro se or

sophisticated litigant. *Wight*, 2002 WL 664005 at \*3; *Yusov*, 892 F.2d at 787. Bad faith establishes “intentionality.” *Mesle*, 615 F.3d at 1092. A finding of “intentionality” after receiving notice of a duty to act establishes culpable conduct. *Id.* Accordingly, because Ms. Thompson disregarded the court’s orders, the court finds that she engaged in culpable conduct.<sup>3</sup>

## 2. Meritorious Defense or Prejudice to Plaintiffs

The court need not make a determination as to whether Ms. Thompson presents a meritorious defense or if setting aside default would prejudice Plaintiffs because the presence of any of the foregoing three factors is sufficient for the court to deny Ms. Thompson’s motion. *Mesle*, 615 F.3d at 1091. Ms. Thompson engaged in culpable conduct by intentionally disregarding court orders. (*See* Mot. at 3.) Accordingly, on that ground, the court refuses to set aside default for “good cause” and denies her liberally construed motion.<sup>4</sup>

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<sup>3</sup> Under *Community Dental Services v. Tani*, 282 F.3d 1164 (9th Cir. 2002), a movant’s conduct may not be culpable if her attorney was grossly negligent. The court, however, finds *Tani* inapplicable here. Even if Ms. Thompson’s attorney was “grossly negligent,” a movant cannot seek relief under *Tani* if she independently engaged in culpable conduct. *Tani*, 282 F.3d at 1172 (“A proper finding of culpable conduct by Tani would be sufficient to justify the district court’s refusal to grant a Rule 60(b) motion.”). As discussed above, Ms. Thompson engaged in culpable conduct, making *Tani* inapplicable in this case.

<sup>4</sup> Though the court denies Ms. Thompson’s motion to set aside default, this does not automatically entitle Plaintiffs to an entry of default judgment. When considering the entry of default judgment, the court will weigh the following factors: (1) the possibility of prejudice to the plaintiff; (2) the merits of Plaintiffs’ substantive claim; (3) the sufficiency of the complaint; (4) the sum of money at stake in the action; (5) the possibility of a dispute concerning material facts; (6) whether the default was due to excusable neglect; and (7) the strong policy underling the Federal Rules of Civil Procedure favoring decisions on the merits. *Eitel v. McCool*, 782 F.2d



**C. Motion for Reconsideration**

The court granted Plaintiffs' motion for summary judgment on Ms. Thompson's liability with respect to copyright infringement. (5/29/13 Order.) Liberally construed, Ms. Thompson's motion also asks the court to reconsider that order. (*See generally* Mot.) Pursuant to the court's Local Rules, a motion for reconsideration of that order must be filed "within fourteen days after the order is filed." Local Rules W.D. Wash. LCR 7(h)(2). Failure to comply with this schedule "may be grounds for denial of the motion." *Id.* The court's order to which Ms. Thompson's motion relates was filed May 29, 2013. (*See generally* 5/29/13 Order.) Ms. Thompson's liberally construed motion for reconsideration, which was filed on February 12, 2014, more than seven months after the court's order, is therefore untimely under the court's Local Rules. The court denies her motion on this ground.

Even if, however, the court were to consider the substance of Ms. Thompson's untimely motion, it would not reconsider its prior order. "Motions for reconsideration are disfavored." Local Rules W.D. Wash. LCR 7(h)(1). The court will ordinarily deny such motions in the absence of (1) "a showing of manifest error in the prior ruling" or (2) "a showing of new facts or legal authority which could not have been brought to its attention earlier with reasonable diligence." *Id.* Ms. Thompson makes neither showing required by the court's Local Rules. Ms. Thompson presents no new legal authority and does not demonstrate a manifest error in the court's prior ruling. Specifically, she does not

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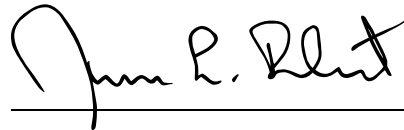
1470, 1471-1472 (9th Cir. 1986). Some of the items or issues raised in Ms. Thompson's motion may be relevant with respect to the hearing on default judgment and damages on April 30, 2014.

1 address the fact that she admitted to copyright infringement in response to Plaintiffs'  
2 requests for admission. (*See* 5/29/13 Order at 20.) Consequently, the court denies her  
3 liberally construed motion for reconsideration of its prior order on summary judgment.

#### 4 IV. CONCLUSION

5 As described above, the court liberally construes Ms. Thompson's pro se motion  
6 for summary judgment as a motion to set aside default under Federal Rule of Civil  
7 Procedure 55(c) and as a motion for reconsideration under Local Rule LCR 7(h) of its  
8 May, 29, 2013, order granting in part and denying in part Plaintiffs' motion for summary  
9 judgment. Consistent with the analysis above, the court DENIES Ms. Thompson's  
10 motion (Dkt. # 77).

11 Dated this 15th day of April, 2014.

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14 JAMES L. ROBART  
15 United States District Judge  
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